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Part IV—Section 4

CENTRAL ACTS AND ORDINANCES

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MINISTRY OF LAW AND JUSTICE**(Legislative Department)***New Delhi, the 4th April 2021 / Chaitra 14, 1943 (Saka).*

The following Central Ordinance promulgated by the President of India is hereby republished for general information:

**THE TRIBUNALS REFORMS
(RATIONALISATION AND CONDITIONS OF
SERVICE) ORDINANCE, 2021****No. 2 OF 2021**

Promulgated by the President in the Seventy-Second
Year of the Republic of India.

*An Ordinance further to amend the Cinematograph
Act, 1952, the Customs Act, 1962, the Airports Authority
of India Act, 1994, the Trade Marks Act, 1999 and the
Protection of Plant Varieties and Farmers' Rights Act,
2001 and certain other Acts.*

WHEREAS The Tribunal Reforms (Rationalisation
and Conditions of Service) Bill, 2021 has been
introduced in the House of the People on the 13th day of
February, 2021;

AND WHEREAS the aforesaid Bill could not be taken up for consideration and passing in the House of the People;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

1.(1) This Ordinance may be called the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021.

Short title and commencement.

(2) It shall come into force at once.

Definitions.

2. In this Ordinance, unless the context otherwise requires,—

(a) “notified date” means the date of commencement of this Ordinance;

(b) “Schedule” means the Schedule appended to this Ordinance;

CHAPTER II

AMENDMENTS TO THE CINEMATOGRAH ACT, 1952

Amendment of Act 37 of 1952.

3. In the Cinematograph Act, 1952, —

(a) in section 2, clause (h) shall be omitted;

(b) in section 5C,—

(i) for the word “Tribunal”, at both the places where it occurs, the words “High Court” shall be substituted;

(ii) sub-section (2) shall be omitted;

(c) sections 5D and 5DD shall be omitted;

(d) in section 6, the words “or, as the case may be, decided by the Tribunal (but not including any proceeding in respect of any matter which is pending before the Tribunal)” shall be omitted;

(e) in sections 7A and 7C, for the word “Tribunal”, wherever it occurs, the words “High Court” shall be substituted;

(f) in sections 7D, 7E and 7F, the words “the Tribunal,”, wherever they occur, shall be omitted;

(g) in section 8, in sub-section (2), clauses (h), (i), (j), and (k) shall be omitted.

CHAPTER III

AMENDMENTS TO THE COPYRIGHT ACT, 1957

Amendment of
Act 14 of 1957.

3. In the Copyright Act, 1957,—

(a) in section 2,—

(i) clause (aa) shall be omitted;

(ii) clause (fa) shall be re-lettered as clause (faa) and before the clause (faa) as so re-lettered, the following clause shall be inserted, namely:—

‘(fa) “Commercial Court”, for the purposes of any State, means a Commercial Court constituted under section 3, or the Commercial Division of a High Court constituted under section 4, of the Commercial Courts Act, 2015;’;

4 of 2016.

(iii) for clause (u), the following clause shall be substituted, namely:—

‘(u) “prescribed” means,—

(A) in relation to proceedings before a High Court, prescribed by rules made by the High Court; and

(B) in other cases, prescribed by rules made under this Act;’;

(b) in section 6,—

(i) for the words “Appellate Board”, wherever they occur, the words “Commercial Court” shall be substituted;

(ii) the words “constituted under section 11 whose decision thereon shall be final” shall be omitted;

(c) in Chapter II, in the Chapter heading, the words “AND APPELLATE BOARD” shall be omitted;

(d) sections 11 and 12 shall be omitted;

(e) in sections 19A, 23, 31, 31A, 31B, 31C, 31D, 32, 32A and 33A, for the words “Appellate Board”, wherever they occur, the words “Commercial Court” shall be substituted;

(f) in section 50, for the words “Appellate Board”, wherever they occur, the words “High Court” shall be substituted;

(g) in section 53A,—

(i) for the words “Appellate Board”, wherever they occur, the words “Commercial Court” shall be substituted;

(ii) in sub-section (2), the words “and the decision of the Appellate Board in this behalf shall be final” shall be omitted;

(h) in section 54, for the words “Appellate Board”, the words “Commercial Court” shall be substituted;

(i) for section 72, the following section shall be substituted, namely:—

“72. (1) Any person aggrieved by any final decision or order of the Registrar of Copyrights may, within three months from the date of the order or decision, appeal to the High Court.

Appeals against
orders of
Registrar of
Copyrights.

(2) Every such appeal shall be heard by a single Judge of the High Court:

Provided that any such Judge may, if he so thinks fit, refer the appeal at any stage of the proceeding to a Bench of the High Court.

(3) Where an appeal is heard by a single Judge, a further appeal shall lie to a Bench of the High Court within three months from the date of decision or order of the single Judge.

(4) In calculating the period of three months provided for an appeal under this section, the time taken in granting a certified copy of the order or record of the decision appealed against shall be excluded.”;

(j) in sections 74 and 75, the words “and the Appellate Board”, wherever they occur, shall be omitted;

(k) in section 77, the words “and every member of the Appellate Board” shall be omitted;

(l) in section 78, in sub-section (2),—

(i) clauses (cA) and (ccB) shall be omitted;

(ii) in clause (f), the words “and the Appellate Board” shall be omitted.

CHAPTER IV

AMENDMENTS TO THE CUSTOMS ACT, 1962

Amendment of
Act 52 of 1962.

5. In the Customs Act, 1962,—

(a) in section 28E, clauses (ba), (f) and (g) shall be omitted;

(b) in section 28EA, the proviso shall be omitted;

(c) in section 28F, sub-section (1) shall be omitted;

(d) in section 28KA,—

(i) in sub-section (1), for the word “Appellate Authority”, at both the places where they occur, the words “High Court” shall be substituted;

(ii) sub-section (2) shall be omitted;

(e) in section 28L, the words “or Appellate Authority”, wherever they occur, shall be omitted;

(f) in section 28M,—

(i) in the marginal heading, the words “and Appellate Authority” shall be omitted;

(ii) sub-section (2) shall be omitted.

CHAPTER V

AMENDMENTS TO THE PATENTS ACT, 1970

Amendment of
Act 39 of 1970.

6. In the Patents Act, 1970,—

(a) in section 2, in sub-section (1),—

(i) clause (a) shall be omitted;

(ii) in clause (u), sub-clause (B) shall be omitted;

(b) in section 52, the words “Appellate Board or”, wherever they occur, shall be omitted;

(c) in section 58,—

(i) the words “the Appellate Board or”, wherever they occur, shall be omitted;

(ii) the words “as the case may be” shall be omitted;

(d) in section 59, the words “the Appellate Board or” shall be omitted;

(e) in section 64, in sub-section (1), the words “by the Appellate Board” shall be omitted;

(f) in section 71, for the words “Appellate Board” and “Board”, wherever they occur, the words “High Court” shall be substituted;

(g) in section 76, the words “or Appellate Board” shall be omitted;

(h) in section 113,—

(i) in sub-section (1),—

(A) the words “the Appellate Board or”, wherever they occur, shall be omitted;

(B) the words “as the case may be” shall be omitted;

(ii) in sub-section (3), the words “or the Appellate Board” shall be omitted;

(i) in Chapter XIX, for the Chapter heading, the Chapter heading “APPEALS” shall be substituted;

(j) sections 116 and 117 shall be omitted;

(k) in section 117A, for the words “Appellate Board”, wherever they occur, the words “High Court” shall be substituted;

(l) sections 117B, 117C and 117D shall be omitted;

(m) in section 117E, for the words “Appellate Board”, wherever they occur, the words “High Court” shall be substituted;

(n) sections 117F, 117G and 117H shall be omitted;

(o) in section 151,—

(A) in sub-section (1), the words “or the Appellate Board”, at both the places where they occur, shall be omitted;

(B) in sub-section (3), for the words “the Appellate Board or the courts, as the case may be”, the words “the courts” shall be substituted;

(p) in section 159, in sub-section (2), clauses (xiia), (xiib) and (xiic) shall be omitted.

CHAPTER VI

AMENDMENTS TO THE AIRPORT AUTHORITY OF INDIA ACT, 1994

7. In the Airports Authority of India Act, 1994,—

Amendment of
Act 55 of 1994.

(a) in section 28A, clause (e) shall be omitted;

(b) in section 28E, for the word “Tribunal”, at both the places where it occurs, the words “Central Government” shall be substituted;

(c) sections 28I, 28J and 28JA shall be omitted;

(d) in section 28K,—

(i) in sub-section (1),—

(A) for the words “Tribunal in such form as may be prescribed”, the words “High Court” shall be substituted;

(B) in the proviso, for the word “Tribunal”, the words “High Court” shall be substituted;

(ii) sub-sections (2), (3), (4) and (5) shall be omitted;

(e) section 28L shall be omitted;

(f) in section 28M, the words “or the Tribunal” shall be omitted;

(g) in section 28N, in sub-section (2), for the word “Tribunal”, the words “High Court” shall be substituted;

(h) in section 33, the words “or the Chairperson of the Tribunal” shall be omitted;

(i) in section 41, in sub-section (2), clauses (gvi), (gvii), (gviii) and (gix) shall be omitted.

CHAPTER VII

AMENDMENTS TO THE TRADE MARKS ACT, 1999

Amendment of
Act 47 of 1999.

8. In the Trade Marks Act, 1999,—

(a) in section 2, in sub-section (1), —

(i) clauses (a), (d), (f), (k), (n), (ze) and (zf) shall be omitted;

(ii) for clause (s), the following clause shall be substituted, namely:—

‘(s) “prescribed” means,—

(i) in relation to proceedings before a High Court, prescribed by rules made by the High Court; and

(ii) in other cases, prescribed by rules made under this Act;’;

(b) in section 10, for the word “tribunal”, the words “Registrar or the High Court, as the case may be,” shall be substituted;

(c) in section 26, for the word “tribunal”, the words “Registrar or the High Court, as the case may be,” shall be substituted;

(d) in section 46, in sub-section (3), for the word “tribunal”, the words “Registrar or the High Court, as the case may be,” shall be substituted;

(e) in section 47, —

(i) for the words “Appellate Board”, at both the places where it occurs, the words “High Court” shall be substituted;

(ii) for the word “tribunal”, wherever it occurs, the words “Registrar or the High Court, as the case may be,” shall be substituted;

(f) in section 55, in sub-section (1), for the word “tribunal”, the words “Registrar or the High Court, as the case may be,” shall be substituted;

(g) in section 57, —

(i) for the words “Appellate Board”, wherever it occurs, the words “High Court” shall be substituted;

(ii) for the word “tribunal”, wherever it occurs, the words “Registrar or the High Court, as the case may be,” shall be substituted;

(h) in section 71, in sub-section (3), for the word “tribunal”, the words “Registrar or the High Court, as the case may be,” shall be substituted;

(i) in Chapter XI, for the Chapter heading, the Chapter heading “APPEALS” shall be substituted;

(j) sections 83, 84, 85, 86, 87, 88, 89, 89A and 90 shall be omitted;

(k) in section 91, for the words “Appellate Board”, wherever they occur, the words “High Court” shall be substituted;

(l) sections 92 and 93 shall be omitted;

(m) for section 94, the following section shall be substituted, namely:—

Bar to appear
before
Registrar.

“94. On ceasing to hold the office, the erstwhile Chairperson, Vice-Chairperson or other Members, shall not appear before the Registrar.”;

(l) sections 95 and 96 shall be omitted;

(m) in section 97, for the words “Appellate Board”, wherever they occur, the words “High Court” shall be substituted;

(n) in section 98, for the words “Appellate Board” and “Board”, wherever they occur, the words “High Court” shall be substituted;

(o) sections 99 and 100 shall be omitted;

(p) in section 113, —

(i) for the words “Appellate Board”, at both the places where they occur, the words “High Court” shall be substituted;

(ii) for the word “tribunal”, the words “Registrar or the High Court, as the case may be,” shall be substituted;

(q) in section 123, the words “and every Member of the Appellate Board” shall be omitted;

(r) in sections 124 and 125, for the words “Appellate Board”, wherever they occur, the words “High Court” shall be substituted;

(s) in section 130, the words “the Appellate Board or” shall be omitted;

(t) in section 141, for the words “Appellate Board”, at both the places where they occur, the words “High Court” shall be substituted;

(u) in section 144, for the word “tribunal”, the words “Registrar or the High Court, as the case may be,” shall be substituted;

(v) in section 157, in sub-section (2),—

(i) clauses (xxxi) and (xxxii) shall be omitted;

(ii) in clause (xxxiii), for the words “Appellate Board”, the words “High Court” shall be substituted.

CHAPTER VIII

AMENDMENTS TO THE GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999

Amendment of
Act 48 of 1999.

9. In the Geographical Indications of Goods
(Registration and Protection) Act, 1999,—

(a) in section 2, in sub-section (1), clauses (a) and (p) shall be omitted;

(b) in section 19, for the word “tribunal”, the words “Registrar or the High Court, as the case may be,” shall be substituted;

(c) in section 23, for the words “and before the Appellate Board before which”, the words “before whom” shall be substituted;

(d) in section 27, —

(i) for the words “Appellate Board”, wherever they occur, the words “High Court” shall be substituted;

(ii) for the word “tribunal”, wherever it occurs,

the words “Registrar or the High Court, as the case may be,” shall be substituted;

(e) in Chapter VII, for the Chapter heading, the Chapter heading “APPEALS” shall be substituted;

(f) in section 31,—

(i) for the words “Appellate Board”, wherever they occur, the words “High Court” shall be substituted;

(ii) sub-section (3) shall be omitted;

(g) sections 32 and 33 shall be omitted;

(h) in sections 34 and 35, for the words “Appellate Board”, wherever they occur, the words “High Court” shall be substituted;

(i) section 36 shall be omitted;

(j) in sections 48,—

(i) for the words “Appellate Board”, at both the places where it occurs, the words “High Court” shall be substituted;

(ii) for the word “tribunal”, the words “Registrar or the High Court, as the case may be,” shall be substituted;

(k) in sections 57 and 58, for the words “Appellate Board”, wherever they occur, the words “High Court” shall be substituted;

(l) in section 63, the words “the Appellate Board or” shall be omitted;

(m) in section 72, for the words “Appellate Board”, wherever they occur, the words “High Court” shall be substituted;

(n) in section 75, for the word “tribunal”, the words “Registrar or the High Court, as the case may be,” shall be substituted;

(o) in section 87, in sub-section (2), clause (n) shall be omitted.

CHAPTER IX

AMENDMENTS TO THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001

Amendment of
Act 53 of 2001.

10. In the Protection of Plant Varieties and Farmers' Rights Act, 2001,—

(a) in section 2, —

(i) clauses (d), (n) and (o) shall be omitted;

(ii) for clause (q), the following clause shall be substituted, namely:—

‘(q) “prescribed” means,—

(A) in relation to proceedings before a High Court, prescribed by rules made by the High Court; and

(B) in other cases, prescribed by rules made under this Act;’

(iii) clauses (y) and (z) shall be omitted;

(b) in section 44, the words “or the Tribunal” shall be omitted;

(c) in Chapter VIII, for the Chapter heading, the Chapter heading “APPEALS” shall be substituted;

(d) sections 54 and 55 shall be omitted;

(e) in section 56,—

(i) for the word “Tribunal”, wherever they occur, the words “High Court” shall be substituted;

(ii) sub-section (3) shall be omitted;

(f) in section 57,—

(i) for the word “Tribunal”, wherever it occurs, the words “High Court” shall be substituted;

(ii) sub-section (5) shall be omitted;

(g) sections 58 and 59 shall be omitted;

(h) in section 89, the words “or the Tribunal” shall be omitted.

CHAPTER X

AMENDMENTS TO THE CONTROL OF NATIONAL HIGHWAYS (LAND AND TRAFFIC) ACT, 2002

11. In the Control of National Highways (Land and Traffic) Act, 2002,— Amendment of Act 13 of 2003.

(a) in section 2,—

(i) clause (a) shall be omitted;

(ii) after clause (d), the following clause shall be inserted, namely:—

‘(da) “Court” means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction;’;

(iii) clause (l) shall be omitted;

(b) in Chapter II, in the Chapter heading, the words “AND TRIBUNALS, ETC.” shall be omitted;

(c) section 5 shall be omitted;

(d) for section 14, the following section shall be substituted, namely:—

Appeals.

“14. An appeal from any order passed, or any action taken, excluding issuance or serving of notices, under sections 26, 27, 28, 36, 37 and 38 by the Highway Administration or an officer authorised on its behalf, as the case may be, shall lie to the

Court.”;

(e) sections 15 and 16 shall be omitted;

(f) in section 17, for the word “Tribunal”, at both the places where it occurs, the word “Court” shall be substituted;

(g) section 18 shall be omitted;

(h) in section 19, for the word “Tribunal”, at both the places where it occurs, the word “Court” shall be substituted;

(i) section 40 shall be omitted;

(j) in section 41,—

(i) the words “or every order passed or decision made on appeal under this Act by the Tribunal” shall be omitted;

(ii) the words “or Tribunal” shall be omitted;

(k) in section 50, in sub-section (2), clause (f) shall be omitted.

CHAPTER XI

AMENDMENTS TO THE FINANCE ACT, 2017

Amendment of
Act 7 of 2017.

12. In the Finance Act, 2017 (hereinafter referred to as the Finance Act),—

(i) for section 184, the following section shall be substituted, namely:—

Qualifications,
appointment,
etc., of
Chairperson and
Members of
Tribunal.

“184. (1) The Central Government may, by notification, make rules to provide for the qualifications, appointment, salaries and allowances, resignation, removal and the other conditions of service of the Chairperson and Members of the Tribunal as specified in the Eighth Schedule:

Provided that a person who has not completed the age of fifty years shall not be eligible for appointment as a Chairperson or Member:

Provided further that the allowances and benefits so payable shall be to the extent as are admissible to a Central Government officer holding the post carrying the same pay:

Provided also that where the Chairperson or Member takes a house on rent, he may be reimbursed a house rent subject to such limits and conditions as may be provided by rules.

(2) The Chairperson and Members of a Tribunal shall be appointed by the Central Government on the recommendation of a Search-cum-Selection Committee (hereinafter referred to as the Committee) constituted under sub-section (3), in such manner as the Central Government may, by rules, provide.

(3) The Search-cum-Selection Committee shall consist of—

(a) the Chief Justice of India or a Judge of Supreme Court nominated by him— Chairperson of the Committee;

(b) two Secretaries nominated by the Government of India — Members;

(c) one Member, who—

(i) in case of appointment of a Chairperson of a Tribunal, shall be the outgoing Chairperson of the Tribunal; or

(ii) in case of appointment of a Member of a Tribunal, shall be the sitting Chairperson of the Tribunal; or

(iii) in case of the Chairperson of the Tribunal seeking re-appointment, shall be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court nominated by the Chief Justice of India:

Provided that, in the following cases, such Member shall always be a retired Judge of the Supreme Court or a retired Chief Justice of a

High Court nominated by the Chief Justice of India, namely:—

(i) Industrial Tribunal constituted by the Central Government under the Industrial Disputes Act, 1947; 14 of 1947.

(ii) Tribunals and Appellate Tribunals constituted under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993; 51 of 1993.

(iii) Tribunals where the Chairperson or the outgoing Chairperson, as the case may be, of the Tribunal is not a retired Judge of the Supreme Court or a retired Chief Justice or Judge of a High Court; and

(iv) such other Tribunals as may be notified by the Central Government in consultation with the Chairperson of the Search-cum-Selection Committee of that Tribunal; and

(d) the Secretary to the Government of India in the Ministry or Department under which the Tribunal is constituted or established — Member-Secretary.

(4) The Chairperson of the Committee shall have the casting vote.

(5) The Member-Secretary of the Committee shall not have any vote.

(6) The Committee shall determine its procedure for making its recommendations.

(7) Notwithstanding anything contained in any judgment, order or decree of any court or in any law for the time being in force, the Committee shall recommend a panel of two names for appointment to the post of Chairperson or Member, as the case may be, and the Central Government shall take a decision on the recommendations of the Committee preferably within three months from the date on which the Committee makes its recommendations to the Government.

(8) No appointment shall be invalid merely by reason of any vacancy or absence in the Committee.

(9) The Chairperson and Member of a Tribunal shall be eligible for re-appointment in accordance with the provisions of this section:

Provided that in making such re-appointment, preference shall be given to the service rendered by such person.

(10) The Central Government shall, on the recommendation of the Committee, remove from office, in such manner as may be provided by rules, any Member, who—

(a) has been adjudged as an insolvent; or

(b) has been convicted of an offence which involves moral turpitude; or

(c) has become physically or mentally incapable of acting as such a Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that where a Member is proposed to be removed on any ground specified in clauses (b) to (e), he shall be informed of the charges against him and given an opportunity of being heard in respect of those charges.

Explanation.— For the purposes of this section, the expressions —

(i) “Tribunal” means a Tribunal, Appellate Tribunal or Authority as specified in column (2) of the Eighth Schedule;

(ii) “Chairperson” includes Chairperson, Chairman, President and Presiding Officer of a Tribunal;

(iii) “Member” includes Vice-Chairman, Vice-Chairperson, Vice-President, Account Member, Administrative Member, Judicial Member, Expert Member, Law Member, Revenue Member and Technical Member, as the case may be, of a Tribunal.”;

(ii) in section 184 as so substituted, after sub-section (10) and before the *Explanation*, the following sub-section shall be inserted and shall be deemed to have been inserted with effect from the 26th May, 2017, namely:—

“(11) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, —

(i) the Chairperson of a Tribunal shall hold office for a term of four years or till he attains the age of seventy years, whichever is earlier;

(ii) the Member of a Tribunal shall hold office for a term of four years or till he attains the age of sixty-seven years, whichever is earlier:

Provided that where a Chairperson or Member is appointed between the 26th day of May, 2017 and the notified date and the term of his office or the age of retirement specified in the order of appointment issued by the Central Government is greater than that which is specified in this section, then, notwithstanding anything contained in this section, the term of office or age of retirement or both, as the case may be, of the Chairperson or Member shall be as specified in his order of appointment subject to a maximum term of office of five years.”.

Amendment of section 186.

13. Section 186 of the Finance Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

“(2) Subject to the provisions of sections 184 and 185, neither the salary and allowances nor the other terms and conditions of service of Chairperson, Vice-

Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member of the Tribunal, Appellate Tribunal or, as the case may be, other Authority may be varied to his disadvantage after his appointment.”.

14. In the Finance Act, in the Eighth Schedule, —

Amendment of
Eighth
Schedule.

(i) items 10, 12, 14, and 15 shall be omitted;

(ii) for item 16, the following item shall be substituted, namely:—

(1)	(2)	(3)
16.	National Consumer Disputes Redressal Commission	The Consumer Protection Act, 2019 (35 of 2019)

15. (1) Notwithstanding anything contained in any law for the time being in force, any person appointed as the Chairperson or Chairman or President or Presiding Officer or Vice-Chairperson or Vice-Chairman or Vice-President or Member of the Tribunal, Appellate Tribunal, or, as the case may be, other Authorities specified in the Schedule and holding office as such immediately before the notified date, shall, on and from the notified date, cease to hold such office, and he shall be entitled to claim compensation not exceeding three months' pay and allowances for the premature termination of term of his office or of any contract of service.

Transitional
provisions.

(2) The officers and other employees of the Tribunals, Appellate Tribunals and other Authorities specified in the Schedule appointed on deputation, before the notified date, shall, on and from the notified date, stand reverted to their parent cadre, Ministry or Department.

(3) Any appeal, application or proceeding pending before the Tribunal, Appellate Tribunal or other Authorities specified in the Schedule, other than those pending before the Authority for Advance Rulings under the Income-tax Act, 1961, before the notified date, shall stand transferred to the Court before which it would have been filed had this Ordinance been in force on the date of filing of such appeal or application or initiation of the

43 of 1961.

proceeding, and the Court may proceed to deal with such cases from the stage at which it stood before such transfer, or from any earlier stage, or de novo, as the Court may deem fit.

(4) The balance of all monies received by, or advanced to, the Tribunal, Appellate Tribunal or other Authorities specified in the Schedule and not spent by it before the notified date, shall, on and from the notified date, stand transferred to the Central Government.

(5) All property of whatever kind owned by, or vested in, the Tribunal, Appellate Tribunal or other Authorities specified in the Schedule before the notified date, shall stand transferred to, on and from the notified date, and shall vest in the Central Government.

Power
remove
difficulties.

to

16. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by general or special order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Ordinance, as appear to it to be necessary or expedient for removing the difficulty.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each Houses of Parliament.

THE SCHEDULE
(See section 15)

1. Appellate Tribunal under Cinematograph Act, 1952 (37 of 1952).
2. Authority for Advance Rulings under Income-tax Act, 1961 (43 of 1961).
3. Airport Appellate Tribunal under Airports Authority of India Act, 1994 (Act 55 of 1994).
4. Intellectual Property Appellate Board under Trade Marks Act, 1999 (47 of 1999).
5. Plant Varieties Protection Appellate Tribunal under Protection of Plant Varieties and Farmers' Rights Act, 2001 (53 of 2001).

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
Secretary to the Government of India.

(Re-published by Order of the Governor)

A.S. PASUPATHI,
*Additional Secretary to Government,
Law Department.*

New Delhi, the 4th April, 2021/Chaitra 14, 1943 (Saka)

The following Central Ordinance promulgated by the President of India is hereby republished for general information:

**THE INSOLVENCY AND BANKRUPTCY CODE
(AMENDMENT) ORDINANCE, 2021**

NO. 3 OF 2021

Promulgated by the President in the Seventy-second Year
of the Republic of India.

*An Ordinance further to amend the Insolvency and
Bankruptcy Code, 2016.*

WHEREAS COVID-19 pandemic has impacted businesses, financial markets and economies all over the world, including India, and has impacted the business operations of micro, small and medium enterprises and exposed many of them to financial distress;

AND WHEREAS the Government has taken several measures to mitigate the distress caused by the pandemic, including increasing the minimum amount of default for initiation of corporate insolvency resolution process to one crore rupees, and suspending filing of applications for initiation of corporate insolvency resolution process in respect of the defaults arising during the period of one year beginning from 25th March 2020;

AND WHEREAS such suspension for filing of applications for initiation of corporate insolvency resolution process has ended on 24th March 2021;

AND WHEREAS the country has shown remarkable resilience, be it tackling the pandemic or ensuring economic recovery;

AND WHEREAS micro, small and medium enterprises are critical for India's economy as they contribute significantly to its gross domestic product and provide employment to a sizeable population;

AND WHEREAS it is considered necessary to urgently address the specific requirements of micro, small and medium enterprises relating to the resolution of their insolvency, due to the unique nature of their businesses and simpler corporate structures;

AND WHEREAS it is considered expedient to provide an efficient alternative insolvency resolution process for corporate persons classified as micro, small and medium enterprises under the Insolvency and Bankruptcy Code, 2016, ensuring quicker, cost-effective and value maximising outcomes for all the stakeholders, in a manner which is least disruptive to the continuity of their businesses and which preserves jobs;

AND WHEREAS in order to achieve these objectives, it is considered expedient to introduce a pre-packaged insolvency resolution process for corporate persons classified as micro, small and medium enterprises;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance: —

Short title and commencement.

1. (1) This Ordinance may be called the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021.

(2) It shall come into force at once.

Amendment of section 4.

2. In the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the principal Act), in section 4, after the proviso, the following proviso shall be inserted, namely:—

31 of 2016.

“Provided further that the Central Government may, by notification, specify such minimum amount of default of higher value, which shall not be more than one crore rupees, for matters relating to the pre-packaged insolvency resolution process of corporate debtors under Chapter III-A.”.

3. In section 5 of the principal Act,—

Amendment of
section 5.

(i) after clause (2), the following clause shall be inserted, namely: —

“(2A) “base resolution plan” means a resolution plan provided by the corporate debtor under clause (c) of sub-section (4) of section 54A;”;

(ii) in clause (5), in sub-clause (b), after the words “corporate insolvency resolution process”, the words “or the pre-packaged insolvency resolution process, as the case may be,” shall be inserted;

(iii) in clause (11), after the words “corporate insolvency resolution process”, the words “or pre-packaged insolvency resolution process, as the case may be” shall be inserted;

(iv) in clause (15), after the words, “process period”, the words “or by the corporate debtor during the pre-packaged insolvency resolution process period, as the case may be,” shall be inserted;

(v) in clause (19), after the words “for the purposes of”, the words and figures “Chapter VI and” shall be inserted;

(vi) after clause (23), the following clauses shall be inserted, namely: —

“(23A) “preliminary information” means a memorandum submitted by the corporate debtor under clause (b) of sub-section (1) of section 54G;

(23B) “pre-packaged insolvency date” means the date of admission of an application for initiating the pre-packaged insolvency resolution process by the Adjudicating Authority under clause (a) of sub-section (4) of section 54C;

(23C) “pre-packaged insolvency resolution process costs” means—

(a) the amount of any interim finance and the costs incurred in raising such finance;

(b) the fees payable to any person acting as a resolution professional and any expenses incurred by him for conducting the pre-packaged insolvency resolution process during the pre-packaged insolvency resolution process period, subject to sub-section (6) of section 54F;

(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern pursuant to an order under sub-section (2) of section 54J;

(d) any costs incurred at the expense of the Government to facilitate the pre-packaged insolvency resolution process; and

(e) any other costs as may be specified;

(23D) “pre-packaged insolvency resolution process period” means the period beginning from the pre-packaged insolvency commencement date and ending on the date on which an order under sub-section (1) of section 54L, or sub-section (1) of section 54N, or sub-section (2) of section 54-O, as the case may be, is passed by the Adjudicating Authority;’;

(vii) in clause (25), after the words, brackets and figures “of sub-section (2) of section 25”, the words, figures and letter “or pursuant to section 54K, as the case may be” shall be inserted;

(viii) in clause (27), after the words “corporate insolvency resolution process”, the words “or the pre-packaged insolvency resolution process, as the case may be,” shall be inserted.

Amendment of
section 11.

4. In section 11 of the principal Act,—

(i) in clause (a), after the words “corporate insolvency resolution process”, the words “or a pre-packaged insolvency resolution process” shall be inserted;

(ii) after clause (a), the following clause shall be inserted, namely:—

“(aa) a financial creditor or an operational creditor of a corporate debtor undergoing a pre-packaged insolvency resolution process; or”;

(iii) after clause (b), the following clause shall be inserted, namely:—

“(ba) a corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A, twelve months preceding the date of making of the application; or”.

5. After section 11 of the principal Act, the following section shall be inserted, namely: —

Insertion of new section 11A.

“11A. (1) Where an application filed under section 54C is pending, the Adjudicating Authority shall pass an order to admit or reject such application, before considering any application filed under section 7 or section 9 or section 10 during the pendency of such application under section 54C, in respect of the same corporate debtor.

Disposal of applications under section 54C and under section 7 or section 9 or section 10.

(2) Where an application under section 54C is filed within fourteen days of filing of any application under section 7 or section 9 or section 10, which is pending, in respect of the same corporate debtor, then, notwithstanding anything contained in sections 7, 9 and 10, the Adjudicating Authority shall first dispose of the application under section 54C.

(3) Where an application under section 54C is filed after fourteen days of the filing of any application under section 7 or section 9 or section 10, in respect of the same corporate debtor, the Adjudicating Authority shall first dispose of the application under sections 7, 9 or 10.

(4) The provisions of this section shall not apply where an application under section 7 or section 9 or section 10 is filed and pending as on the date of the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021.”.

6. In section 33 of the principal Act, in sub-section (3), after the words, “approved by the Adjudicating Authority”, the words, figures, brackets and letter “under

Amendment of section 33.

section 31 or under sub-section (1) of section 54L,” shall be inserted.

Amendment of section 34.

7. In section 34 of the principal Act, in sub-section (1), after the words and figures, “under Chapter II”, the words, figures and letter “or for the pre-packaged insolvency resolution process under Chapter III-A” shall be inserted.

Insertion of new Chapter III-A.

8. After Chapter III of the principal Act, the following Chapter shall be inserted, namely:—

‘CHAPTER III-A

PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS

Corporate debtors eligible for pre-packaged insolvency resolution process.

54A.(1) An application for initiating pre-packaged insolvency resolution process may be made in respect of a corporate debtor classified as a micro, small or medium enterprise under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006. 27 of 2006.

(2) Without prejudice to sub-section (1), an application for initiating pre-packaged insolvency resolution process may be made in respect of a corporate debtor, who commits a default referred to in section 4, subject to the following conditions, that—

(a) it has not undergone pre-packaged insolvency resolution process or completed corporate insolvency resolution process, as the case may be, during the period of three years preceding the initiation date;

(b) it is not undergoing a corporate insolvency resolution process;

(c) no order requiring it to be liquidated is passed under section 33;

(d) it is eligible to submit a resolution plan under section 29A;

(e) the financial creditors of the corporate debtor, not being its related parties, representing such number and such manner as may be specified, have proposed the name of the insolvency professional to be appointed as resolution professional for conducting the pre-packaged

insolvency resolution process of the corporate debtor, and the financial creditors of the corporate debtor, not being its related parties, representing not less than sixty-six per cent. in value of the financial debt due to such creditors, have approved such proposal in such form as may be specified:

Provided that where a corporate debtor does not have any financial creditors, not being its related parties, the proposal and approval under this clause shall be provided by such persons as may be specified;

(f) the majority of the directors or partners of the corporate debtor, as the case may be, have made a declaration, in such form as may be specified, stating, *inter alia*, —

(i) that the corporate debtor shall file an application for initiating pre-packaged insolvency resolution process within a definite time period not exceeding ninety days;

(ii) that the pre-packaged insolvency resolution process is not being initiated to defraud any person; and

(iii) the name of the insolvency professional proposed and approved to be appointed as resolution professional under clause (e);

(g) the members of the corporate debtor have passed a special resolution, or at least three-fourth of the total number of partners, as the case may be, of the corporate debtor have passed a resolution, approving the filing of an application for initiating pre-packaged insolvency resolution process.

(3) The corporate debtor shall obtain an approval from its financial creditors, not being its related parties, representing not less than sixty-six per cent. in value of the financial debt due to such creditors, for the filing of an application for initiating pre-packaged insolvency resolution process, in such form as may be specified:

Provided that where a corporate debtor does not have any financial creditors, not being its related parties, the approval under this sub-section shall be provided by such persons as may be specified.

(4) Prior to seeking approval from financial creditors under sub-section (3), the corporate debtor shall provide such financial creditors with —

(a) the declaration referred to in clause (f) of sub-section (2);

(b) the special resolution or resolution referred to in clause (g) of sub-section (2);

(c) a base resolution plan which conforms to the requirements referred to in section 54K, and such other conditions as may be specified; and

(d) such other information and documents as may be specified.

Duties of resolution professional before initiation of pre-packaged insolvency resolution process.

54B. (1) The insolvency professional, proposed to be appointed as the resolution professional, shall have the following duties commencing from the date of the approval under clause (e) of sub-section (2) of section 54A, namely:—

(a) prepare a report in such form as may be specified, confirming whether the corporate debtor meets the requirements of section 54A, and the base resolution plan conforms to the requirements referred to in clause (c) of sub-section (4) of section 54A;

(b) file such reports and other documents, with the Board, as may be specified; and

(c) perform such other duties as may be specified.

(2) The duties of the insolvency professional under sub-section (1) shall cease, if, —

(a) the corporate debtor fails to file an application for initiating pre-packaged insolvency resolution process within the time period as stated under the declaration referred to in clause (f) of sub-section (2) of section 54A; or

(b) the application for initiating pre-packaged insolvency resolution process is admitted or rejected by the Adjudicating Authority,

as the case may be.

(3) The fees payable to the insolvency professional in relation to the duties performed under sub-section (1) shall be determined and borne in such manner as may be specified and such fees shall form part of the pre-packaged insolvency resolution process costs, if the application for initiation of pre-packaged insolvency resolution process is admitted.

54C. (1) Where a corporate debtor meets the requirements of section 54A, a corporate applicant thereof may file an application with the Adjudicating Authority for initiating pre-packaged insolvency resolution process.

Application to initiate pre-packaged insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form, containing such particulars, in such manner and accompanied with such fee as may be prescribed.

(3) The corporate applicant shall, along with the application, furnish—

(a) the declaration, special resolution or resolution, as the case may be, and the approval of financial creditors for initiating pre-packaged insolvency resolution process in terms of section 54A;

(b) the name and written consent, in such form as may be specified, of the insolvency professional proposed to be appointed as resolution professional, as approved under clause (e) of sub-section (2) of section 54A, and his report as referred to in clause (a) of sub-section (1) of section 54B;

(c) a declaration regarding the existence of any transactions of the corporate debtor that may be within the scope of provisions in respect of avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, in such form as may be specified;

(d) information relating to books of account of the corporate debtor and such other documents relating to such period as may be specified.

(4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order,—

(a) admit the application, if it is complete; or

(b) reject the application, if it is incomplete:

Provided that the Adjudicating Authority shall, before rejecting an application, give notice to the applicant to rectify the defect in the application within seven days from the date of receipt of such notice from the Adjudicating Authority.

(5) The pre-packaged insolvency resolution process shall commence from the date of admission of the application under clause (a) of sub-section (4).

Time-limit for completion of pre-packaged insolvency resolution process.

54D. (1) The pre-packaged insolvency resolution process shall be completed within a period of one hundred and twenty days from the pre-packaged insolvency commencement date.

(2) Without prejudice to sub-section (1), the resolution professional shall submit the resolution plan, as approved by the committee of creditors, to the Adjudicating Authority under sub-section (4) or sub-section (12), as the case may be, of section 54K, within a period of ninety days from the pre-packaged insolvency commencement date.

(3) Where no resolution plan is approved by the committee of creditors within the time period referred to in sub-section (2), the resolution professional shall, on the day after the expiry of such time period, file an application with the Adjudicating Authority for termination of the pre-packaged insolvency resolution process in such form and manner as may be specified.

Declaration of moratorium and public announcement during pre-packaged insolvency resolution process.

54E. (1) The Adjudicating Authority shall, on the pre-packaged insolvency commencement date, along with the order of admission under section 54C —

(a) declare a moratorium for the purposes referred to in sub-section (1) read with sub-section (3) of section 14, which shall, *mutatis mutandis* apply, to the proceedings under this Chapter;

(b) appoint a resolution professional —

(i) as named in the application, if no disciplinary proceeding is pending against him; or

(ii) based on the recommendation made by the Board, if any disciplinary proceeding is pending against the insolvency professional named in the application.

(c) cause a public announcement of the initiation of the pre-packaged insolvency resolution process to be made by the resolution professional, in such form and manner as may be specified, immediately after his appointment.

(2) The order of moratorium shall have effect from the date of such order till the date on which the pre-packaged insolvency resolution process period comes to an end.

54F. (1) The resolution professional shall conduct the pre-packaged insolvency resolution process of a corporate debtor during the pre-packaged insolvency resolution process period.

Duties and powers of resolution professional during pre-packaged insolvency resolution process.

(2) The resolution professional shall perform the following duties, namely:—

(a) confirm the list of claims submitted by the corporate debtor under section 54G, in such manner as may be specified;

(b) inform creditors regarding their claims as confirmed under clause (a), in such manner as may be specified;

(c) maintain an updated list of claims, in such manner as may be specified;

(d) monitor management of the affairs of the corporate debtor;

(e) inform the committee of creditors in the event of breach of any of the obligations of the Board of Directors or partners, as the case may be, of the corporate debtor, under the provisions of this Chapter and the rules and regulations made thereunder;

(f) constitute the committee of creditors and convene and attend all its meetings;

(g) prepare the information memorandum on the basis of the preliminary information memorandum submitted under section 54G and any other relevant information, in such form and manner as may be specified;

(h) file applications for avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, if any; and

(i) such other duties as may be specified.

(3) The resolution professional shall exercise the following powers, namely:—

(a) access all books of accounts, records and information available with the corporate debtor;

(b) access the electronic records of the corporate debtor from an information utility having financial information of the corporate debtor;

(c) access the books of accounts, records and other relevant documents of the corporate debtor available with Government authorities, statutory auditors, accountants and such other persons as may be specified;

(d) attend meetings of members, Board of Directors and committee of directors, or partners, as the case may be, of the corporate debtor;

(e) appoint accountants, legal or other professionals in such manner as may be specified;

(f) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor and the existence of any transactions that may be within the scope of provisions relating to avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, including information relating to —

(i) business operations for the previous two years from the date of pre-packaged insolvency commencement date;

(ii) financial and operational payments for the previous two years from the date of pre-packaged insolvency commencement date;

(iii) list of assets and liabilities as on the initiation date; and

(iv) such other matters as may be specified;

(g) take such other actions in such manner as may be specified.

(4) From the date of appointment of the resolution professional, the financial institutions maintaining accounts of the corporate debtor shall furnish all information relating to the corporate debtor available with them to the resolution professional, as and when required by him.

(5) The personnel of the corporate debtor, its promoters and any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the resolution professional as may be required by him to perform his duties and exercise his powers, and for such purposes, the provisions of sub-sections (2) and (3) of section 19 shall, *mutatis mutandis* apply, in relation to the proceedings under this Chapter.

(6) The fees of the resolution professional and any expenses incurred by him for conducting the pre-packaged insolvency resolution process shall be determined in such manner as may be specified:

Provided that the committee of creditors may impose limits and conditions on such fees and expenses:

Provided further that the fees and expenses for the period prior to the constitution of the committee of creditors shall be subject to ratification by it.

(7) The fees and expenses referred to in sub-section (6) shall be borne in such manner as may be specified.

54G. (1) The corporate debtor shall, within two days of the pre-packaged insolvency commencement date, submit to the resolution professional the following information, updated as on that date, in such form and manner as may be specified, namely:—

List of claims and preliminary information memorandum.

(a) a list of claims, along with details of the respective creditors, their security interests and guarantees, if any; and

(b) a preliminary information memorandum containing information relevant for formulating a resolution plan.

(2) Where any person has sustained any loss or damage as a consequence of the omission of any material information or inclusion of any misleading information in the list of claims or the preliminary information memorandum submitted by the corporate debtor, every person who—

(a) is a promoter or director or partner of the corporate debtor, as the case may be, at the time of submission of the list of claims or the preliminary information memorandum by the corporate debtor; or

(b) has authorised the submission of the list of claims or the preliminary information memorandum by the corporate debtor,

shall, without prejudice to section 77A, be liable to pay compensation to every person who has sustained such loss or damage.

(3) No person shall be liable under sub-section (2), if the list of claims or the preliminary information memorandum was submitted by the corporate debtor without his knowledge or consent.

(4) Subject to section 54E, any person, who sustained any loss or damage as a consequence of omission of material information or inclusion of any misleading information in the list of claims or the preliminary information memorandum shall be entitled to move a court having jurisdiction for seeking compensation for such loss or damage.

Management of
affairs of
corporate debtor.

54H. During the pre-packaged insolvency resolution process period,—

(a) the management of the affairs of the corporate debtor shall continue to vest in the Board of Directors or the partners, as the case may be, of the corporate debtor, subject to such conditions as may be specified;

(b) the Board of Directors or the partners, as the case may be, of the corporate debtor, shall make every endeavour to protect and preserve the value of the property of the corporate debtor, and manage its operations as a going concern; and

(c) the promoters, members, personnel and partners, as the case may be, of the corporate debtor, shall exercise and discharge their contractual or statutory rights and obligations in relation to the corporate debtor, subject to the provisions of this Chapter and such other conditions and restrictions as may be prescribed.

54-I. (1) The resolution professional shall, within seven days of the pre-packaged insolvency commencement date, constitute a committee of creditors, based on the list of claims confirmed under clause (a) of sub-section (2) of section 54F:

Committee of creditors.

Provided that the composition of the committee of creditors shall be altered on the basis of the updated list of claims, in such manner as may be specified, and any such alteration shall not affect the validity of any past decision of the committee of creditors.

(2) The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

(3) Provisions of section 21, except sub-section (1) thereof, shall, *mutatis mutandis* apply, in relation to the committee of creditors under this Chapter:

Provided that for the purposes of this sub-section, references to the “resolution professional” under sub-sections (9) and (10) of section 21, shall be construed as references to “corporate debtor or the resolution professional”.

54J. (1) Where the committee of creditors, at any time during the pre-packaged insolvency resolution process period, by a vote of not less than sixty-six per cent. of the voting shares, resolves to vest the management of the corporate debtor with the resolution professional, the resolution professional shall make an application for this purpose to the Adjudicating Authority, in such form and manner as may be specified.

Vesting management of corporate debtor with resolution professional.

(2) On an application made under sub-section (1), if the Adjudicating Authority is of the opinion that

during the pre-packaged insolvency resolution process—

(a) the affairs of the corporate debtor have been conducted in a fraudulent manner; or

(b) there has been gross mismanagement of the affairs of the corporate debtor,

it shall pass an order vesting the management of the corporate debtor with the resolution professional.

(3) Notwithstanding anything to the contrary contained in this Chapter, the provisions of —

(a) sub-sections (2) and (2A) of section 14;

(b) section 17;

(c) clauses (e) to (g) of section 18;

(d) sections 19 and 20;

(e) sub-section (1) of section 25;

(f) clauses (a) to (c) and clause (k) of sub-section (2) of section 25; and

(g) section 28,

shall, *mutatis mutandis* apply, to the proceedings under this Chapter, from the date of the order under sub-section (2), until the pre-packaged insolvency resolution process period comes to an end.

Consideration
and approval of
resolution plan.

54K. (1) The corporate debtor shall submit the base resolution plan, referred to in clause (c) of sub-section (4) of section 54A, to the resolution professional within two days of the pre-packaged insolvency commencement date, and the resolution professional shall present it to the committee of creditors.

(2) The committee of creditors may provide the corporate debtor an opportunity to revise the base resolution plan prior to its approval under sub-section (4) or invitation of prospective resolution applicants under sub-section (5), as the case may be.

(3) The resolution plans and the base resolution plan, submitted under this section shall conform to the requirements referred to in sub-sections (1) and (2) of section 30, and the provisions of sub-sections (1), (2) and (5) of section 30 shall, *mutatis mutandis* apply, to the proceedings under this Chapter.

(4) The committee of creditors may approve the base resolution plan for submission to the Adjudicating Authority if it does not impair any claims owed by the corporate debtor to the operational creditors.

(5) Where —

(a) the committee of creditors does not approve the base resolution plan under sub-section (4); or

(b) the base resolution plan impairs any claims owed by the corporate debtor to the operational creditors,

the resolution professional shall invite prospective resolution applicants to submit a resolution plan or plans, to compete with the base resolution plan, in such manner as may be specified.

(6) The resolution applicants submitting resolution plans pursuant to invitation under sub-section (5), shall fulfil such criteria as may be laid down by the resolution professional with the approval of the committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified.

(7) The resolution professional shall provide to the resolution applicants, —

(a) the basis for evaluation of resolution plans for the purposes of sub-section (9), as approved by the committee of creditors subject to such conditions as may be specified; and

(b) the relevant information referred to in section 29, which shall, *mutatis mutandis* apply, to the proceedings under this Chapter,

in such manner as may be specified.

(8) The resolution professional shall present to the committee of creditors, for its evaluation, resolution plans which conform to the requirements referred to in sub-section (2) of section 30.

(9) The committee of creditors shall evaluate the resolution plans presented by the resolution professional and select a resolution plan from amongst them.

(10) Where, on the basis of such criteria as may be laid down by it, the committee of creditors decides that the resolution plan selected under sub-section (9) is significantly better than the base resolution plan, such resolution plan may be selected for approval under sub-section (12):

Provided that the criteria laid down by the committee of creditors under this sub-section shall be subject to such conditions as may be specified.

(11) Where the resolution plan selected under sub-section (9) is not considered for approval or does not fulfil the requirements of sub-section (10), it shall compete with the base resolution plan, in such manner and subject to such conditions as may be specified, and one of them shall be selected for approval under sub-section (12).

(12) The resolution plan selected for approval under sub-section (10) or sub-section (11), as the case may be, may be approved by the committee of creditors for submission to the Adjudicating Authority:

Provided that where the resolution plan selected for approval under sub-section (11) is not approved by the committee of creditors, the resolution professional shall file an application for termination of the pre-packaged insolvency resolution process in such form and manner as may be specified.

(13) The approval of the resolution plan under sub-section (4) or sub-section (12), as the case may be, by the committee of creditors, shall be by a vote of not less than sixty-six per cent. of the voting shares, after considering its feasibility and viability, the manner of distribution proposed, taking into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified.

(14) While considering the feasibility and viability of a resolution plan, where the resolution plan submitted by the corporate debtor provides for impairment of any claims owed by the corporate debtor, the committee of creditors may require the promoters of the corporate debtor to dilute their shareholding or voting or control rights in the corporate debtor:

Provided that where the resolution plan does not provide for such dilution, the committee of creditors shall, prior to the approval of such resolution plan under sub-section (4) or sub-section (12), as the case may be, record reasons for its approval.

(15) The resolution professional shall submit the resolution plan as approved by the committee of creditors under sub-section (4) or sub-section (12), as the case may be, to the Adjudicating Authority.

Explanation I.—For the removal of doubts, it is hereby clarified that, the corporate debtor being a resolution applicant under clause (25) of section 5, may submit the base resolution plan either individually or jointly with any other person.

Explanation II.—For the purposes of sub-sections (4) and (14), claims shall be considered to be impaired where the resolution plan does not provide for the full payment of the confirmed claims as per the updated list of claims maintained by the resolution professional.

54L. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) or sub-section (12) of section 54K, as the case may be, subject to the conditions provided therein, meets the requirements as referred to in sub-section (2) of section 30, it shall, within thirty days of the receipt of such resolution plan, by order approve the resolution plan:

Approval of
resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of a resolution plan under this sub-section, satisfy itself that the resolution plan has provisions for its effective implementation.

(2) The order of approval under sub-section (1) shall have such effect as provided under sub-sections (1), (3) and (4) of section 31, which shall, *mutatis mutandis* apply, to the proceedings under this Chapter.

(3) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, within thirty days of the receipt of such resolution plan, by an order, reject the resolution plan and pass an order under section 54N.

(4) Notwithstanding anything to the contrary contained in this section, where the Adjudicating Authority has passed an order under sub-section (2) of section 54J and the resolution plan approved by the committee of creditors under sub-section (4) or sub-section (12), as the case may be, of section 54K, does not result in the change in the management or control of the corporate debtor to a person who was not a promoter or in the management or control of the corporate debtor, the Adjudicating Authority shall pass an order —

(a) rejecting such resolution plan;

(b) terminating the pre-packaged insolvency resolution process and passing a liquidation order in respect of the corporate debtor as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of section 33; and

(c) declaring that the pre-packaged insolvency resolution process costs, if any, shall be included as part of the liquidation costs for the purposes of liquidation of the corporate debtor.

Appeal against
order under
section 54L.

54M. Any appeal from an order approving the resolution plan under sub-section (1) of section 54L, shall be on the grounds laid down in sub-section (3) of section 61.

Termination of
pre-packaged
insolvency
resolution
process.

54N. (1) Where the resolution professional files an application with the Adjudicating Authority, —

(a) under the proviso to sub-section (12) of section 54K; or

(b) under sub-section (3) of section 54D,

the Adjudicating Authority shall, within thirty days of the date of such application, by an order, —

(i) terminate the pre-packaged insolvency resolution process; and

(ii) provide for the manner of continuation of proceedings initiated for avoidance of transactions under Chapter III or proceedings initiated under section 66 and section 67A, if any.

(2) Where the resolution professional, at any time after the pre-packaged insolvency commencement date, but before the approval of resolution plan under sub-section (4) or sub-section (12), as the case may be, of section 54K, intimates the Adjudicating Authority of the decision of the committee of creditors, approved by a vote of sixty-six per cent. of the voting shares, to terminate the pre-packaged insolvency resolution process, the Adjudicating Authority shall pass an order under sub-section (1).

(3) Where the Adjudicating Authority passes an order under sub-section (1), the corporate debtor shall bear the pre-packaged insolvency resolution process costs, if any.

(4) Notwithstanding anything to the contrary contained in this section, where the Adjudicating Authority has passed an order under sub-section (2) of section 54J and the pre-packaged insolvency resolution process is required to be terminated under sub-section (1), the Adjudicating Authority shall pass an order —

(a) of liquidation in respect of the corporate debtor as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of section 33; and

(b) declare that the pre-packaged insolvency resolution process costs, if any, shall be included as part of the liquidation costs for the purposes of liquidation of the corporate debtor.

54-O. (1) The committee of creditors, at any time after the pre-packaged insolvency commencement date but before the approval of resolution plan under sub-section (4) or sub-section (12), as the case may be, of section 54K, by a vote of sixty-six per cent. of the voting shares, may resolve to initiate a corporate insolvency resolution process in respect of the corporate debtor, if such corporate debtor is eligible for corporate insolvency resolution process under Chapter II.

Initiation of corporate insolvency resolution process.

(2) Notwithstanding anything to the contrary contained in Chapter II, where the resolution professional intimates the Adjudicating Authority of the decision of the committee of creditors under sub-section (1), the Adjudicating Authority shall, within thirty days of the date of such intimation, pass an order to —

(a) terminate the pre-packaged insolvency resolution process and initiate corporate insolvency resolution process under Chapter II in respect of the corporate debtor;

(b) appoint the resolution professional referred to in under clause (b) of sub-section (1) of section 54E as the interim resolution professional, subject to submission of written consent by such resolution professional to the Adjudicatory Authority in such form as may be specified; and

(c) declare that the pre-packaged insolvency resolution process costs, if any, shall be included as part of insolvency resolution process costs for the purposes of the corporate insolvency resolution process of the corporate debtor.

(3) Where the resolution professional fails to submit written consent under clause (b) of sub-section (2), the Adjudicating Authority shall appoint an interim resolution professional by making a reference to the Board for recommendation, in the manner as provided under section 16.

(4) Where the Adjudicating Authority passes an order under sub-section (2) —

(a) such order shall be deemed to be an order of admission of an application under section 7 and shall have the same effect;

(b) the corporate insolvency resolution process shall commence from the date of such order;

(c) the proceedings initiated for avoidance of transactions under Chapter III or proceedings initiated under section 66 and section 67A, if any, shall continue during the corporate insolvency resolution process;

(d) for the purposes of sections 43, 46 and 50, references to “insolvency commencement date” shall mean “pre-packaged insolvency commencement date”; and

(e) in computing the relevant time or the period for avoidable transactions, the time-period for the duration of the pre-packaged insolvency resolution process shall also be included, notwithstanding anything to the contrary contained in sections 43, 46 and 50.

54P. (1) Save as provided under this Chapter, the provisions of sections 24, 25A, 26, 27, 28, 29A, 32A, 43 to 51, and the provisions of Chapters VI and VII of this Part shall, *mutatis mutandis* apply, to the pre-packaged insolvency resolution process, subject to the following, namely:—

Application of provisions of Chapters II, III, VI, and VII to this Chapter.

(a) reference to “members of the suspended Board of Directors or the partners” under clause (b) of sub-section (3) of section 24 shall be construed as reference to “members of the Board of Directors or the partners, unless an order has been passed by the Adjudicating Authority under section 54J”;

(b) reference to “clause (j) of sub-section (2) of section 25” under section 26 shall be construed as reference to “clause (h) of sub-section (2) of section 54F”;

(c) reference to “section 16” under section 27 shall be construed as reference to “section 54E”;

(d) reference to “resolution professional” in sub-sections (1) and (4) of section 28 shall be construed as “corporate debtor”;

(e) reference to “section 31” under sub-section (3) of section 61 shall be construed as reference to “sub-section (1) of section 54L”;

(f) reference to “section 14” in sub-sections (1) and (2) of section 74 shall be construed as reference to “clause (a) of sub-section (1) of section 54E”;

(g) reference to “section 31” in sub-section (3) of section 74 shall be construed as reference to “sub-section (1) of section 54L”.

(2) Without prejudice to the provisions of this Chapter and unless the context otherwise requires, where the provisions of Chapters II, III, VI and VII are applied to the proceedings under this Chapter, references to —

(a) “insolvency commencement date” shall be construed as references to “pre-packaged insolvency commencement date”;

(b) “resolution professional” or “interim resolution professional”, as the case may be, shall be construed as references to the resolution professional appointed under this Chapter;

(c) “corporate insolvency resolution process” shall be construed as references to “pre-packaged insolvency resolution process”; and

(d) “insolvency resolution process period” shall be construed as references to “pre-packaged insolvency resolution process period.”.

Amendment of section 61.

9. In section 61 of the principal Act, for sub-section (4), the following sub-sections shall be substituted, namely:—

“(4) An appeal against a liquidation order passed under section 33, or sub-section (4) of section 54L, or sub-section (4) of section 54N, may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order.

(5) An appeal against an order for initiation of corporate insolvency resolution process passed under sub-section (2) of section 54-O may be filed on grounds of material irregularity or fraud committed in relation to such an order.”.

Amendment of section 65.

10. In section 65 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely: —

“(3) If, any person initiates the pre-packaged insolvency resolution process—

(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or

(b) with the intent to defraud any person,

the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.”.

Insertion of new section 67A.

11. After section 67 of the principal Act, the following section shall be inserted, namely:—

Fraudulent management of corporate debtor during pre-packaged insolvency resolution process.

“**67A.** On and after the pre-packaged insolvency commencement date, where an officer of the corporate debtor manages its affairs with the intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may, on an application by the resolution professional, pass an order imposing upon any such officer, a penalty which

shall not be less than one lakh rupees, but may extend to one crore rupees.”.

12. In section 77 of the principal Act, the *Explanation* shall be omitted.

Omission of *Explanation* to section 77.

13. After section 77 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 77A.

“77A. (1) Where—

Punishment for offences related to pre-packaged insolvency resolution process.

(a) a corporate debtor provides any information in the application under section 54C which is false in material particulars, knowing it to be false or omits any material fact, knowing it to be material; or

(b) a corporate debtor provides any information in the list of claims or the preliminary information memorandum submitted under sub-section (1) of section 54G which is false in material particulars, knowing it to be false or omits any material fact, knowing it to be material; or

(c) any person who knowingly and wilfully authorised or permitted the furnishing of such information under sub-clauses (a) and (b),

such corporate debtor or person, as the case may be, shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years or with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both.

(2) If a director or partner of the corporate debtor, as the case may be, deliberately contravenes the provisions of Chapter III-A, such person shall be punishable with imprisonment for not less than three years, but which may extend to five years, or with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both.

Explanation.—For the purposes of this section, and sections 75, 76 and 77, an application shall be deemed to be false in material particulars in case the facts

mentioned or omitted in the application, if true, or not omitted from the application as the case may be, would have been sufficient to determine the existence of a default under this Code.”.

Amendment of
section 208.

14. In section 208 of the principal Act,—

(i) after clause (c), the following clause shall be inserted, namely:—

“(ca) pre-packaged insolvency resolution process under Chapter III-A of Part II;”;

(ii) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Where the name of the insolvency professional proposed to be appointed as a resolution professional, is approved under clause (e) of sub-section (2) of section 54A, it shall be the function of such insolvency professional to take such actions as may be necessary to perform his functions and duties prior to the initiation of the pre-packaged insolvency resolution process under Chapter III-A of Part II.”.

Amendment of
section 239.

15. In section 239 of the principal Act, in sub-section (2), after clause (fc), the following clauses shall be inserted, namely:—

“(fd) the form, particulars, manner and fee for making application before the Adjudicating Authority under sub-section (2) of section 54C;

(fe) the conditions and restrictions with which the promoters, members, personnel and partners of the corporate debtor shall exercise and discharge contractual or statutory rights and obligations under clause (c) of section 54H;”.

Amendment of
section 240.

16. In section 240 of the principal Act, in sub-section (2),—

(i) after clause (e), the following clause shall be inserted, namely:—

“(ea) the other costs under sub-clause (e) of clause (23C) of section 5;”;

(ii) after clause (zk), the following clauses shall be inserted, namely:—

“(zka) such number of financial creditors and the manner of proposing the insolvency professional, and the form for approving such insolvency professional by the financial creditors under clause (e), the persons who shall provide approval under the proviso to clause (e), the form for making a declaration under clause (f) of sub-section (2) of section 54A;

(zkb) the form for obtaining approval from financial creditors under sub-section (3), and the persons who shall provide approval under the proviso to sub-section (3) of section 54A;

(zkc) the other conditions for the base resolution plan under clause (c), and such information and documents under clause (d) of sub-section (4) of section 54A;

(zkd) the form in which the report is to be prepared under clause (a), such reports and other documents under clause (b), and such other duties under clause (c) of sub-section (1), and the manner of determining the fees under sub-section (3) of section 54B;

(zke) the form for providing written consent of the insolvency professional under clause (b), the form for declaration under clause (c), the information relating to books of account and such other documents relating to such period under clause (d) of sub-section (3) of section 54C;

(zkf) the form and manner for making application for termination of the pre-packaged insolvency resolution process under sub-section (3) of section 54D;

(zkg) the form and manner of making public announcement under clause (c) of sub-section (1) of section 54E;

(zkh) the manner of confirming the list of claims under clause (a), the manner of informing creditors under clause (b), the manner of maintaining an updated list of claims under clause (c), the form and manner of preparing the information memorandum under clause (g), and such other duties under clause (i) of sub-section (2) of section 54F;

(zki) such other persons under clause (c), the manner of appointing accountants, legal or other professionals under clause (e), such other matters under sub-clause (iv) of clause (f) and the manner of taking other actions under clause (g) of sub-section (3) of section 54F;

(zkj) the manner of determination of fees and expenses as may be incurred by the resolution professional under sub-section (6) of section 54F;

(zkk) manner of bearing fees and expenses under sub-section (7) of section 54F;

(zkl) the form and manner of list of claims and preliminary information memorandum under sub-section (1) of section 54G;

(zkm) the conditions under clause (a) of section 54H;

(zkn) the manner of alteration of the composition of the committee of creditors under the proviso to sub-section (1) of section 54I;

(zko) the form and manner of making application under sub-section (1) of section 54J;

(zkp) the manner of inviting prospective resolution applicants under sub-section (5) of section 54K;

(zkq) other conditions under sub-section (6) of section 54K;

(zkr) the conditions under clause (a) and the manner of providing the basis for evaluation of resolution plans and the information referred to in section 29 under sub-section (7) of section 54K;

(zks) the conditions under the proviso to sub-section (10) of section 54K;

(zkt) the manner and conditions under sub-section (11) of section 54K;

(zku) the form and manner of filing application under the proviso to sub-section (12) of section 54K;

(zkv) other requirements under sub-section (13) of section 54K;

(zkw) the form for submission of written consent under clause (b) of sub-section (2) of section 54-O;”.

17. In section 240A of the principal Act, in sub-section (1), after the words “corporate insolvency resolution process”, the words “or pre-packaged insolvency resolution process” shall be inserted. Amendment of section 240A.

RAM NATH KOVIND,
President.

DR. G. NARAYANA RAJU,
Secretary to the Government of India.

(Re-published by Order of the Governor)

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Law Department.*